

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

THE HANOVER INSURANCE COMPANY,

Plaintiff,

v.

HURDELBRINK LAW OFFICE, INC.,
MARK E. HURDELBRINK and
CHRISTOPHER WILCOX,

Defendants.

No. 2:18-cv-00651- RSL

STIPULATED MOTION AND ORDER TO
CONTINUE DISCOVERY DEADLINE

I. INTRODUCTION AND RELIEF REQUESTED

Pursuant to Federal Rule of Civil Procedure 16(b)(4), Plaintiff Hanover Insurance Company and Defendants Hurdelbrink Law Office, Inc. and Mark E. Hurdelbrink (collectively “Defendants Hurdelbrink”) jointly request an order continuing the deadline to complete discovery to January 31, 2019. This continuance would allow the parties to complete depositions and finish production of documents requested pursuant to written discovery. This joint request to move the discovery cutoff date of January 7, 2019¹ to January 31, 2019 encompasses less than a month change and would not affect any other deadline as set in the Court’s Minute Order. Dkt. 15 at p. 1.

¹ The current deadline January 6, 2019 falls on a Sunday, and per the minute order (dkt. 15 at 2) the deadline then falls on the following Monday—January 7, 2019.

1 The parties have diligently engaged in discovery, worked cooperatively, and have not
2 previously requested a continuance or modification of any of this Court's orders.²

3 II. BACKGROUND

4 This is a declaratory action seeking to determine whether Plaintiff has a duty to defend or
5 indemnify Defendants Hurdelbrink related to claims arising from Defendants Hurdelbrink's
6 representation of Christopher Wilcox ("Wilcox") in a now resolved divorce proceeding in
7 Thurston County Superior Court. *See* Dkt. 1. Plaintiff asserts that conditions precedent for
8 coverage under the insuring agreement of the applicable policy were not satisfied and that
9 Defendants engaged in conduct during the renewal of his policy barring coverage. *Id.* at ¶¶ 48-
10 59. Defendants Hurdelbrink deny Plaintiff's allegations and, by way of counterclaims, assert
11 extracontractual claims for breach of the duty of good faith, attorney's fees for the litigation,
12 and reserves the right to pursue an Insurance Fair Conduct Act violation claim. Dkt. 12 at ¶¶ 27-
13 37. Plaintiff denies Defendants Hurdelbrink's counterclaims. Dkt. 13.

14 Since the Court's entry of the Minute Order Setting Trial Date & Related Dates, the
15 parties have exchanged initial disclosures and written discovery requests have been propounded
16 and partial responded. Namely, Plaintiff has propounded requests for production of certain
17 documents for which Defendants Hurdelbrink are still gathering responsive documents. To
18 date, both parties have work amicably, and with flexibility, to attempt to be diligent in discovery
19 both formal and informal. It is believed by both parties that these outstanding record
20 productions will be concluded before the proposed January 31, 2019 deadline.

21 In addition, the Parties have limited depositions that will occur in the first week of
22 January ahead of the discovery cut off, including Defendant Hurdelbrink's deposition and the
23 deposition of an employee of Hurdelbrink Law. Plaintiff, to date, has waited to note the
24 Defendants Hurdelbrink's deposition in order to have complete records previously requested
25 through written discovery.

26 ² However, the Parties did initially request a discovery deadline of March 1, 2019 in their Joint
27 Status Report and Discovery Plan. Dkt. 14 at 5. This motion asks for a date more than a month
before that requested date.

Additionally, Defendants Hurdlebrink attempted though informal requests, or relayed to Plaintiff's counsel they would attempt, to obtain non-privileged files and records from non-party third party entities including Ms. Wilcox's attorneys in the divorce proceedings: Barbara Jo Sylvester, Chris Maharry, and Paul Firuz. Unfortunately, to date those records have not been obtained. Plaintiff has issued subpoenas to these individuals for the records. Following receipt of the records, should additional information be necessary, Plaintiff (or Defendants Hurdlebrink) may wish to depose these individuals. To ensure dates suitable for the non-parties can be obtained after obtaining the records pursuant to the subpoenas, the parties seek this continuance. Again, both parties believe these depositions can be completed ahead of January 31, 2019, should they be needed.

The parties have not previously requested a continuation of deadlines or an amendment to the court's orders.

III. ISSUE PRESENTED

Whether under Federal Rule of Civil Procedure 16(b)(4), the Court should amend the Minute Order (dkt. 15) to continue the discovery cutoff date for less than a month so that the parties can attempt to obtain additional written and oral discovery without resorting to motions practice to compel the same and to obtain documents through formal means when informal requests failed.

IV. ANALYSIS

Pursuant to Federal Rule of Civil Procedure 16(b)(4), “[a] schedule may be modified for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4). Good cause for purposes of Rule 16 focuses on the diligence of the party seeking to modify the pre-trial scheduling order. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992). Good cause means scheduling deadlines cannot be met despite the parties’ diligence. *Id.* at 609. Here, the parties have engaged in active and diligent discovery. Most notably, the parties have worked diligently together, without Court intervention, related to obtaining overdue documents pursuant to written discovery. In order to save the Court’s resources and avoid an unnecessary motion to

1 compel these documents not yet produced, the parties seek a short continuance to attempt to
2 resolve the outstanding record production, as well as obtain documents from third-parties that
3 they hoped would have been obtainable through informal means. Importantly, upon receipt of
4 the third-party records it may be that no additional discovery is necessary, but the parties wish
5 to extend the deadline so as to set depositions for the parties subject to the third party subpoenas
6 should they be necessary.

7 The proposed continuance would not impact any other date set in the minute order and
8 specifically would not effect the trial date or the dispositive motion deadline.

9 **V. CONCLUSION**

10 This requested continuance is reflective of the interest of conserving litigation and
11 judicial resources. A proposed Stipulated Order is provided for the Court's consideration.

12 DATED: December 20, 2018

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ORDER

Based on the Stipulated Motion filed by the Parties, it is hereby ORDERED, for good cause shown, that the discovery cutoff be continued to January 31, 2019.

DATED this 21st day of December, 2018.


The Honorable Robert S. Lasnik